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(ii) Waiver requests must address each of the criteria in paragraph (c)(7)(i) of this section and should be submitted to the Assistant Administrator, Program Accounting and Regulatory Analysis'.

[56 FR 63360, Dec. 3, 1991, as amended at 61 FR 107, Jan. 3, 1996; 63 FR 38722, July 17, 1998; 66 FR 27835, May 21, 2001]

§ 1773.6 Auditor communication.

(a) During the planning stages of a financial statement audit, GAGAS and AICPA standards require the auditor to communicate certain information regarding the nature and extent of testing and reporting on compliance with laws and regulations and internal control over financial reporting. The communication must include the nature of any additional testing of compliance and internal control required by laws and regulations or otherwise requested, and whether the auditors are planning to provide opinions on compliance with laws and regulations and internal control over financial reporting. This communication must take the form of an audit engagement letter prepared by the CPA and formally accepted by the board of directors or an audit committee representing the board of directors. The engagement letter must also encompass those items prescribed in SAS 83, entitled "Establishing an Understanding with the Client". It must also include the following:

(1) The borrower and the CPA acknowledge that the audit is being performed and the auditor's report, report on compliance and on internal control over financial reporting, and management letter is being issued in order to enable the borrower to comply with the provisions of RUS's security instrument;

(2) The borrower and CPA acknowledge that RUS will consider the borrower to be in violation of its security instrument with RUS if the borrower fails to have an audit performed and documented in compliance with GAGAS and this part;

(3) The CPA represents that he/she meets the requirements under this part to be satisfactory to RUS;

(4) The CPA will perform the audit and will prepare the auditor's report, report on compliance and on internal

control over financial reporting, and management letter in accordance with the requirements of this part;

(5) The CPA will document the audit work performed in accordance with GAGAS, the professional standards of the AICPA, and the requirements of this part;

(6) The CPA will make all audit-related documents, including auditor's reports, workpapers, and management letters available to RUS or its representatives (OIG and GAO), upon request, and will permit the photocopying of all audit-related documents; and

(7) The CPA will follow the requirements of reporting fraud and illegal acts as outlined in § 1773.9.

(b) The audit agreement may include such additional terms and conditions as the CPA and borrower deem appropriate, including, but not limited to:

(1) The CPA will report all audit findings to the board of directors as required in § 1773.20(b); and

(2) The auditor's report, report on compliance, report on compliance and on internal controls over financial reporting, and management letter with copies for transmittal to RUS, and supplemental lenders, if applicable, will be submitted to the borrower's board of directors within 90 days of the as of audit date;

(c) A copy of the audit agreement must be available at the borrower's office for inspection by RUS personnel. One copy of the current audit agreement must be maintained in the CPA's workpapers or permanent file.

[56 FR 63360, Dec. 3, 1991, as amended at 61 FR 108, Jan 3, 1996; 63 FR 38722, July 17, 1998; 66 FR 27835, 27836, May 21, 2001]

§ 1773.7 Audit standards.

(a) The audit must be performed in accordance with GAGAS and this part. The audit must be performed in accordance with GAGAS in effect at the audit date unless the borrower is directed otherwise, in writing, by RUS.

(b) The audit must include such tests of the accounting records and such other auditing procedures that are sufficient to enable the CPA to express an opinion on the financial statements and to issue the required report on compliance and on internal control

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over financial reporting and the management letter.

(c) *Audit scope limitation.* (1) The borrower will not limit the scope of the audit to the extent that the CPA is unable to meet RUS's audit requirements or to provide an unqualified opinion that the financial statements are presented fairly in conformity with GAAP.

(2) The security instrument provision requiring the submission of a report of the audit is not satisfied if the CPA must qualify the opinion in the auditor's report due to limitations placed on the scope of the audit by the borrower.

(3) If the CPA determines during the audit that an unqualified opinion cannot be issued due to a scope limitation imposed by the borrower, the CPA should use professional judgment to determine what levels of the borrower's management should be informed.

(4) After informing the borrower's management, if the scope limitation is not adequately resolved, the CPA should immediately contact the AA-PARA, RUS, U.S. Department of Agriculture, Washington, DC 20250-1523. The AA-PARA will endeavor to resolve the matter with the borrower.

[56 FR 63360, Dec. 3, 1991, as amended at 66 FR 27836, May 21, 2001]

§ 1773.8 Audit date.

(a) The annual audit must be performed as of the end of the same calendar month each year unless prior approval to change the as of audit date is obtained, in writing, from RUS.

(1) A borrower may request a change in the as of audit date by writing to the AA-PARA at least 60 days prior to the newly requested as of audit date.

(2) The time period between the prior as of audit date and the newly requested as of audit date must be no longer than twenty-four months. For example, a borrower that wishes to change its as of audit date from December 31, 20X1, to June 30, must make the change effective no later than June 30, 20X3.

(b) Comparative financial statements must be prepared and audited for the twelve months ending as of the new audit date and for the twelve months immediately preceding that period.

(c) A borrower that changes its as of audit date from December 31, 20X1, to June 30, 20X3, must have the CPA report on statements in the following manner:

Previously issued statements	Statements prepared as of new audit date
12/31/20X1; 12/31/20X0 (Statement need not be re-issued).	6/30/20X3; 6/30/20X2.

[56 FR 63360, Dec. 3, 1991, as amended at 66 FR 27835, 27836, May 21, 2001]

§ 1773.9 Disclosure of fraud, illegal acts, and other noncompliance.

(a) In accordance with GAGAS, the auditor must design the audit to provide reasonable assurance of detecting fraud that is material to the financial statements and material misstatements resulting from direct and material illegal acts, and non-compliance with the provisions of contracts or grant agreements that could have a direct and material effect on financial statements amounts.

(b) If specific information comes to the auditor's attention that provides evidence concerning the existence of possible illegal acts that could have a material indirect effect on the financial statements or material noncompliance with the provisions of contracts or grant agreements that could have a material indirect effect on the financial statements, auditors should apply audit procedures specifically directed to ascertaining whether an illegal act or noncompliance with provisions of contract or grant agreements has occurred.

(c) Pursuant to the terms of its audit engagement letter with the borrower, the CPA must immediately report, in writing, all instances of fraud and all indications or instances of illegal acts, whether material or not, to:

(1) The president of the borrower's board of directors;

(2) The Assistant Administrator, Program Accounting and Regulatory Analysis; and

(3) OIG, as follows:

(i) For the States of Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia, Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York,